

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

08 CR 76

5 versus

United States Courthouse  
225 Cadman Plaza East  
Brooklyn, N.Y. 11201

6 JOSEPH AGATE, ET AL,

7 DEFENDANTS.  
8 -----x

9 April 9th, 2008  
10 11:30 a. m.

11 TRANSCRIPT OF CONFERENCE

12 Before: HON. JACK B. WEINSTEIN,  
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES

15 REPRESENTING THE GOVERNMENT:

16 United States Attorneys Office  
17 Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, NY 11201-1820  
18 BY: Joseph Lipton, AUSA  
Evan M. Norris, AUSA  
19 Amy Legow Cohn, AUSA  
Roger Anson Burlingame, AUSA  
20 Daniel D. Brownell, AUSA

21 REPRESENTING THE DEFENDANTS:

22 Margaret Shalley, Esq. for Vincent Pacelli  
23 Elizabeth Macedonio, Esq. for John D'Amico  
24 Joseph Ryan, Esq. for Domenico Cefalu  
25 Amit Sondhi, Esq. for Domenico Cefalu

**REPRESENTING THE DEFENDANTS (CONTINUED):**

Charles Carnesi, Esq. for Anthony Licata

Seth Ginsberg, Esq. for William Scotto (appearance waived)

Dominic Amorosa, Esq. for Gino Cracolizzi

Vincent Martinelli, Esq. for Anthony O'Donnell

Eric Franz, Esq. for Augustus Sclafani

Joseph DiBenedetto, Esq. for Joseph Scopo

Alan J. Futerfas, Esq. for Louis Filipelli

Ron Rubinstein, Esq. for Arthur Zagari

Jim Froccaro, Esq. for Robert Epifenia

Joseph Benfante, Esq. for Joseph Chirico

Daniel Tanon, Esq. for Thomas Cacciopoli

William DiCenzo, Esq. for Arthur Zagari

Brian King, Esq. for Jerome Brancato

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**Proceedings recorded by mechanical stenography, transcription  
by CAT.**

1 THE COURT: Good morning, everyone. Sit down, please.

2 THE CLERK: Criminal cause for status conference, USA  
3 versus Jerome Brancato, et al.

4 THE COURT: I think the primary purpose this morning  
5 is to divide these cases into reasonable groups for trial, and  
6 also inquire about representation, and whether it should be  
7 permitted in a number of cases.

8 I should begin by asking the government whether it  
9 would be prepared to try a number of these groups together,  
10 simultaneously, so that one judge could try A and one judge B  
11 at the same time. Do you have enough lawyer power to do that?

12 MR. LIPTON: I don't know, Judge. The issue might be  
13 more that we might not have the witness power, because one or  
14 more witnesses are going to be the primary witnesses in a  
15 number of these groups, and it might be sort of impossible to  
16 do it at the same time or close, even, in time.

17 THE COURT: Well, think about it. The witness problem  
18 doesn't seem to be insuperable. You can work with your  
19 colleagues with respect to the point at which they're called,  
20 and adjournments and continuances can be granted. I'm not  
21 pressing the point at this morning's hearing. I'm just raising  
22 the problem. Obviously, we don't want to keep repeating trials  
23 now. You have eight or nine different trials. Each one of  
24 them is substantial -- which would mean that even if they are  
25 tried one immediately after the other, supposedly need a week

1 or so between trials or more to regroup and rest -- we're  
2 talking about almost a year of continuous trial or maybe more  
3 than a year of continuous trials.

4           Anyway, you think about it. We have no lack of judge  
5 power here. We can try as many as you want at the same time.  
6 We have lots of judges. We can try them all at the same time.  
7 We're not particularly busy, so anytime you want to come before  
8 us with a trial, we're ready. Anyway, think about it.

9           Now, we're going to conduct proceedings based upon the  
10 submissions of the government, because I think that even though  
11 some of their submissions may be deemed objectionable by the  
12 defendants, they have obviously spent a lot of time and thought  
13 on how these cases should be divided up. It's not an easy  
14 thing.

15           The contentions on the MDC problem of listening to  
16 consensual recordings, we'll take up at 3:30. Only one  
17 defendant has made a motion on the issue. So if we're going to  
18 have other defendants who are going to argue it, you'd better  
19 take it up and let the marshal know immediately, or the other  
20 defendants won't be here.

21           MS. MACEDONIO: Your Honor, Elizabeth Macedonio on  
22 behalf of Mr. D'Amico. We have a similar problem with respect  
23 to access to audio tapes, so we would like to be present for  
24 that, as well.

25           THE COURT: Well, if you want your client present,

1 you'd better take it up with the government and the marshals,  
2 so they'll have him here.

3 MS. MACEDONIO: I have already spoken to Mr. Lipton  
4 about it, and I will advise the marshals. Thank you, Judge.

5 THE COURT: Okay. There's an application to have all  
6 62 defendants meet in this courthouse. I'm not going to grant  
7 that. It's impossible to provide security.

8 Those who are out on bail can meet anytime they want.  
9 If they want to meet in the courthouse, we can arrange it, but  
10 you can meet wherever you want, as long as you don't violate  
11 the terms of your bail.

12 Now, part of the problem we have to deal with this  
13 morning is a number of attorneys represent a number of  
14 defendants, and they currently or previously represented  
15 associates of the Gambino organized crime family in other  
16 cases.

17 The government has advised in a communication,  
18 indicated those possible conflicts it knew about. If defense  
19 counsel are aware of other possible conflicts, they should  
20 bring it to the attention of the government and the Court  
21 promptly. I'm not going to try a case and then have revealed  
22 to me a possible conflict under 2255 or some other basis.

23 So I consider that every defense counsel has an  
24 obligation, if he or she is aware of another possible conflict  
25 because of the firm's representation or his or her

1 representation of a possible witness or another defendant or a  
2 prior defendant that may be involved in some way, they have a  
3 professional and ethical obligation to bring it up. I don't  
4 want to any cover-ups here.

5 All right. Then let's move to Group A. Group A trial  
6 is set for June 6th. Let me call the roll of this first group,  
7 and see if everybody is here. This is A, B and C.

8 Cefalu?

9 MR. RYAN: Yes, Judge. Joseph Ryan for Dominic  
10 Cefalu.

11 THE COURT: He's waived his appearance, correct?

12 MR. RYAN: He did not waive his appearance. There was  
13 an error made, but we'll waive it to expedite the proceeding  
14 today only.

15 THE COURT: All right. I want a letter from him on  
16 that.

17 MR. RYAN: Yes. And we'll have him here, I hope, at  
18 3:30, because we want to be present for the tape issue.

19 THE COURT: Okay. We'll try.

20 And you filed a letter last night asking he be  
21 produced, but it didn't come in time, and the marshals -- I'm  
22 not saying that critically, of course.

23 D'Amico?

24 MS. MACEDONIO: Elizabeth Macedonio for Mr. D'Amico.

25 THE COURT: Pardon me?

1 MS. MACEDONIO: Elizabeth Macedonio for Mr. D'Amico.

2 Your Honor, are you just calling the roll, or do you  
3 want to hear counsel's position with respect to the trial date?

4 THE COURT: I'm calling the roll.

5 MS. MACEDONIO: Thank you, Judge.

6 THE COURT: Filippelli?

7 MR. FUTERFAS: Good morning, Your Honor. Alan  
8 Futerfas for Louis Filipelli, who is present.

9 THE COURT: He is in custody.

10 Pacelli?

11 MS. SHALLEY: Good morning, Your Honor. Margaret  
12 Shalley on behalf of Vincent Pacelli, who is present, as well.

13 THE COURT: He is in custody.

14 Sclafani?

15 MR. FRANZ: Good morning, Your Honor. Eric Franz for  
16 Mr. Sclafani. He is seated in the back row.

17 THE COURT: Where? He's in the back row?

18 MR. FRANZ: Yes, standing up with the blazer on and  
19 the yellow shirt.

20 THE COURT: All right. Well, is that where you want  
21 him?

22 MR. FRANZ: Your Honor, it's fine.

23 THE COURT: Brancato?

24 MR. KING: Brian King from Tacopina and Siegel.  
25 Mr. Brancato is ill today. We left a message.

1 THE COURT: I can't hear you.

2 MR. KING: Mr. Brancato is ill today. My office had  
3 left a message for the courtroom deputy. I ask that his  
4 appearance be waived today.

5 THE COURT: You waive his presence?

6 MR. KING: Yes, Your Honor.

7 THE COURT: I want a letter from you.

8 MR. KING: Yes, Your Honor.

9 THE COURT: Chirico?

10 MR. BENFANTE: Joseph Benfante, Your Honor. Good  
11 morning, Your Honor. And Mr. Chirico is standing there in the  
12 back row.

13 THE COURT: Are you satisfied with where he is?

14 MR. BENFANTE: Yes, Judge.

15 THE COURT: O'Donnell?

16 MR. MARTINELLI: Yes, Your Honor. Vincent Martinelli  
17 for Mr. O'Donnell, who is standing in the back, and I am  
18 satisfied.

19 THE COURT: Zagari?

20 MR. RUBINSTEIN: Good morning, Your Honor. Ron  
21 Rubinstein for the defendant, Zagari, who is standing in the  
22 second to last row, and he's satisfied with his position.

23 THE COURT: Cacciopoli?

24 MR. TANON: Daniel Tanon for Thomas Cacciopoli. And I  
25 guess he has no choice but to be satisfied with his position.



1 THE COURT: Where are you?

2 DEFENDANT CACCIOPOLI: Right here (indicating in the  
3 jury box).

4 THE COURT: Thank you.

5 DEFENDANT CACCIOPOLI: You're welcome.

6 THE COURT: Cracolici?

7 MR. AMOROSA: Yes, Judge. Dominic Amorosa for  
8 Mr. Cracolici, who is in court.

9 THE COURT: Are you satisfied with his position?

10 MR. AMOROSA: I am. Thanks.

11 THE COURT: Epifania?

12 MR. FROCCARO: Judge, James Froccaro for Mr. Epifania.  
13 He's in the court standing right over there, and I'm satisfied  
14 with his position.

15 THE COURT: Thank you.

16 Licata?

17 MR. CARNESI: Good morning, Your Honor. Charles  
18 Carnesi, appearing for Mr. Licata. Mr. Licata is present in  
19 court, as well.

20 THE COURT: Are you satisfied with your position in  
21 the courtroom, Mr. Licata?

22 DEFENDANT LICATA: Yes.

23 THE COURT: Yes? Good.

24 Mr. Scopo?

25 MR. DIBENEDETTO: Good morning, Judge. Joseph

1 DiBenedetto for Mr. Scopo, who is seated in the second row.

2 THE COURT: Are you happy with your position in the  
3 courtroom, Mr. Scopo?

4 DEFENDANT SCOPO: Yes.

5 THE COURT: Mr. Scotto?

6 MR. GINSBERG: Good morning, Your Honor. Seth  
7 Ginsberg for William Scotto. His appearance has been waived  
8 today.

9 THE COURT: Did we get a letter on that?

10 MR. GINSBERG: Yes.

11 THE COURT: I think we did, yes.

12 Now, is there anybody I left off who is supposed to be  
13 here for this first meeting? No? Okay. Now, let's take them  
14 up one at a time.

15 Now, as to Cefalu, he has been previously placed in  
16 Group B, and now he is placed in Group A.

17 MR. RYAN: That's fine with us.

18 THE COURT: Okay. All right. So we have a satisfied  
19 customer.

20 MR. RYAN: Thank you.

21 THE COURT: D'Amico?

22 MS. MACEDONIO: Good morning, Your Honor.

23 I do have a conflict with the current trial date. I  
24 have a firm date in front of Judge Townes scheduled for  
25 June 16.

1 THE COURT: You have a what?

2 MS. MACEDONIO: A firm trial date in front of Judge  
3 Townes scheduled for the 16th.

4 THE COURT: What kind of case?

5 MS. MACEDONIO: It's also a RICO case, Your Honor.  
6 The defendants have been incarcerated for approximately 18  
7 months at this point.

8 THE COURT: How many people?

9 MS. MACEDONIO: Four.

10 THE COURT: All right. Apply for an adjournment. I  
11 want to go forward with this case.

12 MS. MACEDONIO: Your Honor, I'm also new on the case.  
13 I just filed a notice of appearance. I haven't had the  
14 opportunity the review any of the discovery. My client is  
15 incarcerated in Queens. There are separation orders in place.  
16 He hasn't had the opportunity to review the discovery. And we  
17 are requesting a later trial date.

18 THE COURT: You're requesting a what?

19 MS. MACEDONIO: A later date.

20 THE COURT: You're denied a later date. We have to  
21 move forward.

22 MS. MACEDONIO: Your Honor, given the Court's  
23 position, I trust that I can confer with June as far as  
24 scheduling with Judge Townes?

25 THE COURT: Take it up with Judge Townes and with the

1 U.S. Attorney, who has some influence on dates.

2 MS. MACEDONIO: I will report back to Your Honor.

3 THE COURT: And explain to the Judge that this is a 62  
4 defendant case, and I can't deal with adjournments, in view of  
5 the fact that I have practically the whole cream of the New  
6 York bar in this case. If I have to deal with all of their  
7 other engagements, I'll never be able to finish the case. So  
8 I'm not going to look kindly on any other engagements,  
9 particularly in the case of a recent engagement.

10 So you'll have to either get out of the case or make  
11 other arrangements. Your client is going forward on this date.

12 MS. MACEDONIO: Thank you, Judge.

13 THE COURT: Filippelli?

14 MR. FUTERFAS: Yes, Your Honor. Alan Futerfas for Mr.  
15 Filippelli.

16 We had communicated, Your Honor, our objection to  
17 being tried alongside RICO defendants. In Group A, the  
18 government has postured the non-RICO defendants along with RICO  
19 defendants. We stated our objection to Your Honor to that on  
20 multiple occasions by letter.

21 Also, Your Honor, I do share in Ms. Macedonio's  
22 concerns. I had written to Your Honor last night, thinking  
23 that at the absolute earliest, I would be prepared to go to  
24 trial July 1.

25 There are literally hundreds of consensual

1 conversations to be reviewed. A lawyer listening to every  
2 tape, if a lawyer was to listen to every tape, it would take  
3 months and months and months.

4 THE COURT: Excuse me. Are you retained?

5 MR. FUTERFAS: Yes, I am, Your Honor.

6 THE COURT: Well, then hire additional counsel and  
7 paraprofessionals to assist you.

8 MR. FUTERFAS: Actually, I am, and one is starting May  
9 1st, but it's still a question of --

10 THE COURT: Well, May 1st? This is only April 9th.  
11 What's happening between?

12 MR. FUTERFAS: We have received the tapes. We have  
13 not only received the tapes, but we corresponded with the  
14 government and got a list from the government of tapes that we  
15 thought and they thought might have been most productive for us  
16 to listen to, but there are practical realities.

17 And the practical reality is, you have got a principal  
18 witness against our client who made hundreds of recordings,  
19 many of which may or may not be relevant, and even if the  
20 government considers them relevant, there may be others that we  
21 consider relevant that the government is not playing. I won't  
22 even find those tapes. I won't even be able to find the  
23 existence of those tapes in the time by June 6. All I asked  
24 for was July 1, thinking that the extra time between now and  
25 July 1 would make it marginally able, working very diligently

1 to be prepared for the trial. So that's my application, Your  
2 Honor.

3 THE COURT: Well, it's denied.

4 Can you all hear me? I've had a little trouble.

5 MR. FUTERFAS: Your Honor, the other concern we  
6 raised, obviously, is being on trial with individuals charged  
7 with RICO, when Mr. Filippelli -- and there are few other  
8 defendants -- were not charged with RICO being alongside those  
9 in a joint trial. We have cited cases to Your Honor,  
10 obviously, and have serious concerns about being in that  
11 situation.

12 The government's got to prove an enterprise. They  
13 have a number of witnesses that we think they might call as  
14 enterprise witnesses that will have nothing to say and nothing  
15 to do with the charges against Mr. Filippelli, and the  
16 possibility of prejudice is particularly acute. So we made  
17 that application, Your Honor, and we maintain it today.

18 THE COURT: No. I understand it. It's a substantial  
19 point.

20 What's the government's response?

21 MR. LIPTON: Your Honor, we recognize --

22 THE COURT: You needn't stand, unless you want to.

23 MR. LIPTON: We recognize that this case involves RICO  
24 and non-RICO defendants. The particular defendant that was  
25 Mr. Futerfas is representing is involved in the same exact

1 extortion, albeit he's charged in a substantive count and not  
2 the RICO. But given the nature of almost all the extortions  
3 that are charged in this case, they are sort of driven by the  
4 fact that the Gambino family controls the industry.

5 So necessarily, all of the extortions, even if it's  
6 not a RICO count, it's going to have to come out as to how  
7 these people controlled the industry, and how the defendants  
8 were able to extort the individuals who we say are the victims  
9 in the case. And it's necessarily going to come out that they  
10 have a position in the family. And enterprise proof, if it's  
11 not specifically to that individual, it's still going to come  
12 out as to who they are.

13 Your Honor certainly can give an appropriate  
14 instruction, so that the jury knows that they are not able to  
15 consider certain evidence if it's a non-RICO defendant, and we  
16 think Your Honor will be able to get the jury to follow those  
17 instructions.

18 MR. FUTERFAS: Your Honor, if I could briefly respond.

19 There are 23 RICO defendants. That's enough for,  
20 pursuant to Your Honor's prior order in which Your Honor didn't  
21 want more than seven defendants to go to trial at once, that's  
22 enough for three consecutive RICO trials. There are 39  
23 non-RICO defendants.

24 To create prejudice to say that we're going to take a  
25 few of the non-RICO defendants and try them with some of the

1 racketeering or the RICO defendants, most respectfully does not  
2 seem to make sense, when we have such large groups to choose  
3 from, to eliminate prejudice.

4 With respect to the government's suggestion that the  
5 trials would be essentially coterminous in terms of the  
6 evidence, it really is not the case. Your Honor has sat  
7 through so many RICO racketeering trials. I've done a few,  
8 myself. It's not the case. They call witness after witness  
9 who testifies extensively about alleged organized crime  
10 families. They call experts.

11 Meanwhile, I have got a client who's charged with  
12 essentially a single count, a substantive count, a conspiracy  
13 count, who is going to be sitting through weeks of trial, weeks  
14 of tapes that have nothing to do with him, when there are 39  
15 other non-RICO defendants that he could be on trial with.

16 THE COURT: Well, I understand the problem, and it's a  
17 forcible argument that you make. I'll do the best I can to  
18 protect your client. Necessarily, when people get associated  
19 with gangsters -- which is the allegation -- they run into  
20 serious problems.

21 Is it your contention that this defendant is a member  
22 or associated?

23 MR. LIPTON: It is alleged, yes, Judge, that he's a  
24 captain in the Gambino family.

25 THE COURT: Captain?



1 MR. LIPTON: Yes, Judge.

2 MR. FUTERFAS: Your Honor, he's not charged in the  
3 RICO. There are plenty of racketeering defendants. If the  
4 Court wants a trial soon, there are plenty of defendants who  
5 are charged in the RICO that can go to trial now. My client  
6 can go to trial with some non-RICO defendants at some point.

7 THE COURT: But he's not.

8 MR. FUTERFAS: There is no reason he has to go to  
9 trial now with racketeering defendants.

10 THE COURT: Well, I'm not going to separate them. If  
11 he's associated with these people outside of court, it's one of  
12 the dangers.

13 I'll do everything I can to protect him, but there has  
14 to be some arbitrary divisions. Otherwise, at one of the end  
15 of the spectrum, everybody is entitled to a separate trial, and  
16 that's obviously impossible.

17 MR. FUTERFAS: Your Honor, but an individual set of  
18 racketeering defendants, six or seven who could go to trial  
19 together, are not going to be prejudiced by the introduction of  
20 the enterprise proof, because they're all charged with  
21 enterprise. So why are we selectively taking certain non-RICO  
22 defendants and putting them with RICO defendants?

23 So my request, and I put it in writing a number of  
24 times, group Mr. Filippelli and anyone who shares his objection  
25 with other non-RICO defendants, and set them for trial with

1 non-RICO defendants. Your Honor doesn't have to face the  
2 issue.

3 THE COURT: It's just these, Cefalu, D'Amico,  
4 Filippelli, Pacelli and Sclafani? Those are the only ones  
5 being tried.

6 MR. LIPTON: That is the first group we propose, Your  
7 Honor.

8 THE COURT: It seems to me everybody has a basis for  
9 objecting, but yours is the least appealing. You're getting a  
10 prompt trial in a small group. And apparently, there's  
11 evidence that your client was substantially involved with this  
12 gang -- if it is a gang. I'm not saying it is. It's alleged.

13 As much as I understand your position, I'm not going  
14 to going to separate you.

15 Now, you're representing which defendant?

16 MR. FUTERFAS: Louis Filippelli, Your Honor.

17 THE COURT: Filippelli? Is Bettina Schein out of that  
18 case?

19 MR. FUTERFAS: Your Honor, she was acting of counsel  
20 to me for some status conferences, and seeing Mr. Filippelli in  
21 jail when I couldn't see him. Subsequent to that, she was  
22 retained by another defendant in this case.

23 THE COURT: So she is not a problem for me because she  
24 was a problem, since I have her as representing Todd Polakoff,  
25 but that's out now? She is not representing the person who is

1 your client now, Filippelli?

2 MR. FUTERFAS: I was always counsel for  
3 Mr. Filippelli.

4 THE COURT: Well, it wasn't clear to me. Now it's  
5 clear. You're the only representative, and you have no  
6 conflict, because you're not representing anyone else, correct?

7 MR. FUTERFAS: That's correct.

8 THE COURT: Okay. That simplifies my problem.

9 Ms. Shalley?

10 MS. SHALLEY: Margaret Shalley for Vincent Pacelli.

11 We also filed a motion to sever from the RICO  
12 defendants who would be in this count, Cefalu and D'Amico, and  
13 we also ask for a later trial just because of the volume of  
14 discovery.

15 THE COURT: You didn't want to be tried with J.  
16 Corozzo, correct?

17 MS. SHALLEY: Well, that was the original group that  
18 was proposed by the government. In the new group, the RICO  
19 defendants would be Cefalu and D'Amico. For exactly the same  
20 reasons as in the motion, the spillover prejudice of being  
21 tried with the RICO defendants, and having to prove the  
22 enterprise. Well, we suggest --

23 THE COURT: Reduce the possibility, but I'll hear your  
24 suggestion.

25 MS. SHALLEY: We suggested the group of Filippelli,

1 Pacelli and Sclafani, as a group to go, as opposed to including  
2 D'Amico and Cefalu.

3 THE COURT: Just three?

4 MS. SHALLEY: Just three.

5 THE COURT: Denied. I can't do it. That places too  
6 much of a burden on the Court. I can't have groups of three.  
7 Some of these groups will be reduced by pleas, I assume.

8 But your motion to be excluded from that group is  
9 denied. You'll go forward.

10 MS. SHALLEY: Okay.

11 THE COURT: Now, as I call each one and the attorney  
12 speaks, if you don't bring to my attention any conflict that I  
13 don't raise, I assume you will raise it. So silence is taken  
14 by the Court in connection with my previous admonition as  
15 indicating there's nothing to bring to the Court's attention or  
16 the U.S. Attorney's attention.

17 Sclafani?

18 MR. FRANZ: Yes, Your Honor. Eric Franz. There is a  
19 conflict issue to be addressed, as well as I have problems with  
20 the trial date, as well.

21 THE COURT: All right. I'll hear you on the trial  
22 date. Do you object to being in Group A?

23 MR. FRANZ: I do, for the reasons articulated by  
24 Mr. Futerfas, and also in my letter to the Court, the spillover  
25 prejudice to Mr. Sclafani, who is a non-RICO defendant charged

1 with essentially one crime.

2 I would proffer to the Court that a trial of  
3 Mr. Sclafani on his own -- which I'm sure the Court isn't going  
4 to grant a solo trial -- would probably be a matter of days,  
5 versus the several weeks that would otherwise be in an  
6 enterprise-related trial.

7 With regard to readiness, I have two back-to-back  
8 trials scheduled for May, and those dates will not be changed  
9 by the judge in New Jersey, on cases that involve hundreds of  
10 thousands of documents. They are consumed by my office and  
11 will consume my office until those trials are done, which would  
12 be sometime in early June.

13 I have a tentative trial date with Judge Wood in the  
14 Southern District. Now, that date might be able to get moved,  
15 certainly if I explain to the Court your position.

16 But I cannot under any circumstances be ready for a  
17 June 6th trial date. My client is not incarcerated. He's out  
18 on bond. We never requested a speedy trial. We never insisted  
19 on an immediate trial.

20 This is a case where it's not just about reviewing the  
21 tapes that the government identifies that my client is captured  
22 on. It's about reviewing the tapes where he might be referred  
23 to. It's about reviewing the tapes for potential impeachment  
24 material of the witness that wore the wire for the consensual  
25 recordings, plus going through all the other discovery.

1 I cannot -- my firm cannot be ready for him and quite  
2 frankly, even if the Court were to rule that he would be ready  
3 by June 6, I don't know that he has the resources to hire a  
4 team of lawyers he would to require to do the proper  
5 preparation to be ready for June 6th.

6 I recognize that government wants to try these cases  
7 and the Court does, as well. But to essentially say that we  
8 have to be ready for trial 60 days from now when I have other  
9 trials, and we just can't do it.

10 And I respectfully request that he would be given a  
11 date in the future. There are certainly lots of other  
12 defendants that he can be grouped with -- non-RICO defendants  
13 he can be grouped with.

14 I would respectfully request that the Court consider  
15 that we can be grouped up with Mr. Filippelli -- although I  
16 don't have consent from his counsel at this point and other  
17 non-RICO defendants, to try this case in a much more fluid  
18 fashion.

19 It might be a little bit onerous for the government to  
20 recall a witness, but it certainly would overcome the prejudice  
21 to try to eliminate the prejudice that my client would suffer  
22 in the process of sitting in an enterprise-related trial. I  
23 can't be ready for trial on June 6. I made that point clear.

24 As far as one other issue, there is a conflict issue  
25 which the government raised in the letter, and that is that I

1 represented Mr. Scars -- I mean Mr. DiLeonardo, Michael  
2 DiLeonardo in trials several years ago, and he's going to be a  
3 witness regarding enterprise proof. I think the only evidence  
4 that he would be able to offer, according to the government  
5 about Mr. Sclafani, is that he knows him and he may or may not  
6 identify him as somebody who is alleged to be made member of  
7 organized crime.

8 Other than that, Mr. DiLeonardo became a cooperating  
9 witness in 2001. The crime that my client is charged with is  
10 charged several years later. So there is no real relevant  
11 testimony from Mr. DiLeonardo regarding Mr. Sclafani in that  
12 regard.

13 But should this Court rule that Mr. DiLeonardo could  
14 testify at a trial concerning Mr. Sclafani, Mr. Sclafani is  
15 prepared to try to engage another lawyer for the purpose -- the  
16 sole purpose of cross-examining Mr. DiLeonardo, which, as the  
17 Court may or may not be aware, he's testified in numerous other  
18 trials. And the task of -- that task alone of preparing to  
19 cross-examine Mr. DiLeonardo would be monumental. I'm sure  
20 that a lawyer that was engaged today would be prepared for June  
21 6th for that sole task, but the remainder of the case, we  
22 wouldn't be ready, and I'd ask for a trial date in the future,  
23 possibly September.

24 THE COURT: What's the view of the government?

25 MR. LIPTON: Judge, we're not unsympathetic --

1 THE COURT: Keep your voice up, so everybody can hear  
2 you.

3 MR. LIPTON: The government is not unsympathetic to  
4 counsels' -- the burden of counsel on other cases -- obviously,  
5 the government has other cases -- we have tried as best we can  
6 without being arbitrary to put the groupings together, so that  
7 it could minimize redundancies and minimize overlap, and  
8 minimize having the same exact trial over and over again.

9 As best as we can see it, anchoring off those  
10 defendants that did want a speedy trial, so that they could  
11 have those rights heard, we fashioned the first trial group so  
12 that we would have just those people who are in the counts with  
13 Mr. Cefalu, who wanted a speedy trial, and we did that in as  
14 limited a fashion as we could, and included Mr. Franz's client,  
15 Mr. Sciafani, because he's in the same exact count and  
16 basically, if we went to trial without him, you're going to  
17 have the same exact trial as to Mr. Sciafani, based on the same  
18 witness, the same documents, and it's going to be  
19 virtually the same thing.

20 The government would be ready for a June trial, if  
21 that's what Your Honor wants. I understand counsel now -- this  
22 is the third who has had an issue with the timing -- but in the  
23 government's perspective, this is a cohesive trial group that  
24 will be the most efficient for the government, for the Court,  
25 for defense counsel, so that there's not an enormous amount of



1 duplication.

2           What we're trying to do is keep the trials down, that  
3 it's not going to be months on end and things that Your Honor  
4 is going to be hearing over and over again. It's going to be a  
5 confined group that would have the same counts, would have the  
6 same evidence and the same witnesses.

7           That's what we tried to do, and given that Mr. Cefalu  
8 wanted a speedy trial and Your Honor wanted a June trial date,  
9 that's what our rational was.

10           THE COURT: Well, what about the cross-examination of  
11 the prior client?

12           MR. LIPTON: And what we have done for that is given  
13 Your Honor's ruling on other cases, we have tried to talk with  
14 Mr. Franz, so that we could give a fact to his clients sixth  
15 amendment right to have the attorney that he wishes or at the  
16 same time, safeguarding the interest of the government and the  
17 witness who is going to be testifying at this trial -- and it's  
18 not just enterprise evidence. It actually goes to the various  
19 extortions that are charged in the case.

20           It's the government's perspective that by allowing --  
21 by having another attorney who did not represent Mr. DiLeonardo  
22 to cross-examine him, and also getting the agreement of  
23 Mr. Franz not to address his former client's credibility, that  
24 that would safeguard the interest of Mr. DiLeonardo.

25           And he is somewhat of a unique position, because as

1 Your Honor knows, he's testified at a number of other trials.  
2 So most of the issues that related to the attorney/client  
3 information from Mr. Franz to Mr. DiLeonardo has been the  
4 subject of cross-examination, and it as been out there.

5 So with those considerations, Your Honor, we have  
6 tried to fashion a resolution by bringing it to Your Honor's  
7 attention, so that if Your Honor thinks it's appropriate, you  
8 can get the appropriate waivers from Mr. Sclafani. If he  
9 cannot, then the government's position would be that,  
10 unfortunately, it does raise a conflict that would require  
11 disqualification.

12 THE COURT: Well, I understand the defense position is  
13 that you'll have somebody else cross-examine him?

14 MR. FRANZ: Yes. That's fine, Judge.

15 THE COURT: All right. I think -- where's  
16 Mr. Sclafani?

17 You have heard this and discussed this matter with  
18 your attorney, have you, sir?

19 DEFENDANT SCLAFANI: Yes.

20 THE COURT: And are you agreeable to this?

21 DEFENDANT SCLAFANI: Yes.

22 THE COURT: You understand you're entitled to an  
23 attorney who has no conflict at all. And that the fact that  
24 your attorney has represented what may be a major witness  
25 against him, may inhibit to some degree the effectiveness of

1 his cross-examination. Has he explained all of that to you?

2 DEFENDANT SCLAFANI: Yes.

3 THE COURT: And you're agreeable?

4 DEFENDANT SCLAFANI: Yes.

5 THE COURT: Do you want time to consult another lawyer  
6 about this?

7 DEFENDANT SCLAFANI: I discussed it with Mr. Franz.

8 THE COURT: Well, come up here and --

9 MR. FRANZ: One moment, Your Honor.

10 Your Honor, I have spoken to Mr. Sclafani. He wants  
11 me to remain as his lawyer, and he understands the conflict  
12 issue, and he's willing to waive it.

13 THE COURT: You understand that, and this is what you  
14 want?

15 DEFENDANT SCLAFANI: Yes, sir.

16 THE COURT: And you're willing to waive whatever  
17 rights you have under the constitution, so that you can get a  
18 lawyer of your own choice, is that right?

19 DEFENDANT SCLAFANI: I want to stay with Mr. Franz.

20 THE COURT: Is this the lawyer you want --

21 DEFENDANT SCLAFANI: Yes.

22 THE COURT: -- despite the possible problem? All  
23 right. Give me a letter, please.

24 MR. FRANZ: Sure.

25 THE COURT: And it's acceptable to me, unless there's

1 a problem with the government.

2 MR. LIPTON: Your Honor, just to be clear, the only  
3 issue that I think Mr. Franz is agreeable that he will not  
4 cross-examine Mr. Scars. We just want to make clear that he  
5 will not be able to comment on Mr. Scars -- excuse me -- Mr.  
6 DiLeonardo -- I apologize, Your Honor -- Mr. DiLeonardo's  
7 credibility at any point during the trial, either during  
8 argument --

9 THE COURT: No. Argument? Of course he can comment  
10 on credibility.

11 MR. LIPTON: Well, it's just that --

12 THE COURT: He's going to argue the case.

13 MR. LIPTON: Well, that is, the issue, Your Honor, is  
14 his former client and cross-examining is sort of bound up with  
15 the fact --

16 THE COURT: Can you get a waiver from the witness?

17 MR. LIPTON: He is not willing to waive, Your Honor,  
18 from our understanding with his current attorney.

19 THE COURT: Not willing to waive, even if there's  
20 somebody else cross-examining him?

21 MR. LIPTON: I think that's an acceptable solution,  
22 but it's the extra issue of not having his credibility  
23 addressed -- argued by his former attorney.

24 THE COURT: I don't see how I can do that. I don't  
25 want to have two people arguing for the defendant.

1 Explain it to the witness. He ought to be agreeable.  
2 I won't say he's putty in your hands, but you certainly have  
3 influence on him.

4 MR. LIPTON: He's testified for the government a  
5 number of times, as the Court is aware -- in front of Your  
6 Honor, in fact, and defense counsel knows. I certainly can  
7 raise it, but obviously, we don't represent him. He takes his,  
8 I presume, advice from his attorney.

9 THE COURT: He's an independent person, but take it  
10 up. See if you can resolve the problem. I'm not going to  
11 prevent this attorney from arguing credibility, but you have to  
12 argue credibility only on what's in evidence, right?

13 MR. FRANZ: Of course. I would only do it that way,  
14 anyhow.

15 THE COURT: Of course.

16 MR. FRANZ: The issue remains, Your Honor, I have  
17 spoken with my co-counsel, Ms. Shalley, on behalf of her  
18 client, Pacelli, Mr. Futerfas, on behalf of Mr. Filippelli, and  
19 Ms. Macedonio on behalf of Mr. D'Amico, we all request a  
20 September trial date. It's a matter of just getting ready, and  
21 I understand that the government -- we have to start somewhere.  
22 But there's a certain arbitrariness in the fact that, you know,  
23 somebody has to go first, but it's 60 days from today,  
24 essentially.

25 THE COURT: It's not 60 days from today. When was

1 your client indicted?

2 MR. FRANZ: Well, it's 60 days from today that we're  
3 discussing this trial date of June 6. It's actually less than  
4 60. When he was indicted, when first appeared, Judge Garaufis  
5 refused to set a trial date, declared it complex, and I on  
6 behalf of Mr. Sclafani didn't object. We knew it was going to  
7 be a monumental task to go to trial.

8 Typically, co-counsel, we suffer when other lawyers or  
9 other defendants, they file motions, and that's excluded from  
10 speedy trial. There's lots of ways that we're prejudiced by  
11 co-counsel and co-defendants. In this situation, some people  
12 want a speedy trial, and they want an immediate trial. They  
13 should be given it, not to the detriment of those people that  
14 can't be ready for trial.

15 And that's all we're asking. We're not asking to  
16 postpone this inevitably. We're asking for sufficient time to  
17 get ready for trial in a case that is filled with a lot of  
18 discovery materials.

19 And Your Honor suggested earlier that you don't want  
20 lawyers to come forward with any conflicts because you don't  
21 want there to be a cover-up. You don't want to read into a  
22 2255. I don't want to see a 2255 someday by my client because  
23 I wasn't prepared, that he couldn't afford to hire a major law  
24 firm in Manhattan to put seven lawyers on the case.

25 THE COURT: Excuse me, if your client cant afford

1 sufficient help, I'll give him a partial CJA to assist you, but  
2 you will have to come forward with some economic basis for  
3 that.

4 MR. FRANZ: I understand that, Your Honor, but the  
5 point remains that we in the current situation can't be ready  
6 for June to ask for September, I don't believe, is unreasonable  
7 under the circumstances.

8 THE COURT: All right. I understand your position.  
9 And nothing is written in stone. We may be able to do some  
10 things, but at the moment, I'm not doing it.

11 MR. FRANZ: I will sit down then at the moment, and  
12 we'll revisit the issue at the appropriate time, Your Honor.

13 THE COURT: So do we have five defendants now for  
14 trial on the date set, correct?

15 MR. LIPTON: Correct, Judge.

16 THE COURT: All right. So --

17 MR. LIPTON: Judge, I believe you said June 6th. I  
18 think in the order previous, it was June 9th, which is a  
19 Monday.

20 THE COURT: June 9th. You see, it's not even  
21 June 6th. It's June 9th.

22 MR. FRANZ: Unfortunately, that doesn't change it, but  
23 I wish it would. Are we better now?

24 THE COURT: All right. That takes care of the first  
25 group. Now we go to Group B, correct? And this group will be

1 on a trailing calendar, unless the government can try two cases  
2 at once, in which case you'll have to set another date for the  
3 second group, Group B.

4 That's Brancato, Chirico, O'Donnell and Zagari, right?

5 MR. LIPTON: Correct, Judge.

6 THE COURT: Brancato?

7 MR. KING: Yes, Your Honor. Brian King from Tacopina  
8 and Siegel for Mr. Brancato.

9 THE COURT: Yes. He was moved from Group B to Group C  
10 to meet his problem.

11 MR. KING: We have no objection to the Group B as  
12 currently stated in the government's revised letter.

13 THE COURT: Group C, "C" as in "Charlie."

14 MR. KING: The last -- the last one.

15 THE COURT: You're going to be in B.

16 MR. KING: Group B. That's what I thought.

17 THE COURT: You moved from Group C to B?

18 MR. KING: Correct.

19 THE COURT: Okay. And you have no objection?

20 MR. KING: Just so I'm clear about it, Your Honor, I  
21 believe it was Group B with Mr. Brancato, Mr. Chirico,  
22 Mr. O'Donnell and Mr. Zagari.

23 THE COURT: That's my understanding, four.

24 MR. KING: That, we have no problem with.

25 THE COURT: Chirico?



1 MR. BENFANTE: Your Honor, Joseph Benfante for  
2 Mr. Joseph Chirico, Your Honor.

3 Judge, I do represent another client, Mr. Russell  
4 Ferrisi, who is in Group G.

5 THE COURT: Yes, I see that.

6 MR. BENFANTE: I have consulted with the Assistant  
7 U.S. Attorney, Mr. Lipton, and it appears that there should be  
8 no conflict. Their cases are totally unrelated, so I don't  
9 think there should be a problem, Judge.

10 THE COURT: Well, where is Mr. Chirico?

11 MR. BENFANTE: He's right there, Your Honor.

12 THE COURT: Come up and stand next to your attorney,  
13 please, sir.

14 Do you understand that your attorney is representing  
15 both you and Mr. Russell Ferrisi, who is going to be tried in  
16 another group?

17 DEFENDANT CHIRICO: Yes.

18 THE COURT: And you have discussed it with him?

19 DEFENDANT CHIRICO: Yes, with my lawyer, yes.

20 THE COURT: Now, that may make a difference in what  
21 kind of plea he can arrange, because he's representing two of  
22 you. You have a right to independent counsel. You understand  
23 that problem?

24 Another problem is in limiting his cross-examination.

25 DEFENDANT CHIRICO: I know.

1 THE COURT: You have discussed it thoroughly with him?

2 DEFENDANT CHIRICO: Yes.

3 THE COURT: You want time to discuss it with another  
4 attorney?

5 DEFENDANT CHIRICO: No.

6 THE COURT: You waive any possible conflict here?

7 DEFENDANT CHIRICO: Yes.

8 THE COURT: All right. Give me a letter to that  
9 effect.

10 MR. BENFANTE: Yes, Your Honor.

11 THE COURT: Does the government have any objection to  
12 proceeding?

13 MR. LIPTON: No. With that waiver, Your Honor, under  
14 Rule 44(c), we believe that is appropriate, given that  
15 Mr. Benfante's other client also makes a similar waiver that  
16 Your Honor accepts.

17 THE COURT: Now, what about this Joseph Scopo?

18 MR. BENFANTE: Yes, Your Honor.

19 THE COURT: He was in your office, wasn't he?

20 MR. BENFANTE: Yes. Originally, Your Honor,  
21 Mr. DiBenedetto, who is now an independent counsel, and he is  
22 representing Mr. Scopo.

23 MR. DIBENEDETTO: I'm present here, Judge, if you need  
24 to hear from me.

25 THE COURT: Well, as long as we think of people who

1 are in the same office as identical -- when did you leave the  
2 office?

3 MR. DIBENEDETTO: At the outset of the case, Judge. I  
4 have not met Mr. Chirico or Mr. Ferrisi. The only notice that  
5 I filed is for Mr. Scopo.

6 THE COURT: Is there any conflict, in your opinion?

7 MR. DIBENEDETTO: No, Judge.

8 THE COURT: How about you?

9 MR. BENFANTE: No, Your Honor.

10 THE COURT: Where is -- is Scopo here?

11 MR. DIBENEDETTO: Yes, he is, Judge.

12 THE COURT: Where is Mr. Scopo? You understand that  
13 your attorney may have had something to do with another  
14 defendant, and that it may inhibit him in some way in the way  
15 he represents you?

16 DEFENDANT SCOPO: 5yes.

17 THE COURT: Yes or no?

18 DEFENDANT SCOPO: Yes.

19 THE COURT: And have you consulted this attorney about  
20 that?

21 DEFENDANT SCOPO: Yes.

22 THE COURT: Do you want him to continue to represent  
23 you?

24 DEFENDANT SCOPO: Yes.

25 THE COURT: You want time to consult with another

1 attorney about the matter?

2 DEFENDANT SCOPO: No.

3 THE COURT: All right. Give me a letter, please.

4 MR. DIBENEDETTO: Yes, Judge.

5 THE COURT: I see no reason, unless the government can  
6 raise one about disqualification.

7 MR. LIPTON: No, Judge. I think with all the  
8 attorneys who are representing multiple defendants, as long as  
9 their client waives their right and Your Honor accepts that  
10 waiver, and they're knowingly and voluntarily given, I think  
11 that as to Mr. DiBenedetto's and Mr. Benfante's clients, that  
12 waiver is appropriate.

13 THE COURT: Okay. Thank you. You can sit down,  
14 unless want to say anything.

15 MR. BENFANTE: I just want to say something.

16 THE COURT: Yes. I would be glad to hear you.

17 MR. BENFANTE: The Group A group, if you're going to  
18 give us an indication of how long that case would be for the  
19 government's case because we're trailing -- the Group B would  
20 be trailing. I just wanted to --

21 THE COURT: How long do you think it will take?

22 MR. LIPTON: We estimate for the first group, Your  
23 Honor, anywhere from four to six weeks.

24 THE COURT: Four weeks. We'll take a break of a week  
25 or so, and then you would be on. I may, depending on what I

1 can do, move it back a little, because I do appreciate what  
2 other counsel are facing, and I want everybody to have a fair  
3 trial. But, you could expect to go on towards the end of the  
4 summer, I would think.

5 MR. BENFANTE: Just so Your Honor knows, I join in  
6 co-counsel's -- Eric Franz's eloquent and very, very specific  
7 recommendations to the Court about giving us extra time just to  
8 listen to these tapes. Just that I tried, Judge. I put in  
9 many, many hours so far. They're body wires. They're  
10 unusually -- people are eating in restaurants and very, very  
11 hard, Judge, so --

12 THE COURT: I know. I know it's very difficult.

13 Are you transcribing any for the government?

14 MR. LIPTON: Yes, Judge. We're -- as we can, and  
15 we're trying to now as the trial groups change, focus on the  
16 ones that are most pressing and we're getting those out to  
17 defense counsel.

18 THE COURT: Whatever you transcribe, get right out.  
19 Now, what they're do is get them out in nonfinal form. So I  
20 don't want -- I don't want defense counsel showing  
21 discrepancies in the transcripts, because that's unfair.

22 MR. BENFANTE: We'll sign the usual stipulation, Your  
23 Honor. They're rough drafts.

24 THE COURT: They'll give them to you as soon as they  
25 can.

1 MR. BENFANTE: They're a great aid to us, Judge.  
2 Thank you.

3 THE COURT: We'll see what they're going to do, but  
4 you can assume you're going to be tried at a later date.

5 O'Donnell?

6 MR. MARTINELLI: Yes, Your Honor. Vincent Martinelli  
7 for Mr. Anthony O'Donnell. Good afternoon.

8 First and foremost, I do not object to the  
9 government's revised trial groupings, and we accept that.

10 Secondly, I do have a conflict in that I represent Mr.  
11 Steven Sabella from Group E. I have the same application as  
12 Mr. Benfante. As a matter of fact, for Mr. Sabella and his two  
13 co-conspirators, I think they're so isolated from almost  
14 everybody else in the entire indictment, not just  
15 Mr. O'Donnell, that there is virtually no overlap. There is  
16 zero overlap.

17 I have spoken to Mr. Sabella, who will be here at  
18 1:15. He's prepared to waive, and I would call up Mr.  
19 O'Donnell, with your permission, and execute that waiver.

20 THE COURT: All right. Where is he? Okay.

21 MR. MARTINELLI: Your Honor, subject to your own  
22 independent questions, I have reviewed very specifically --  
23 because it was addressed by Mr. Sabella at an earlier stage --  
24 I reviewed very specifically the potential for a conflict, the  
25 fact that I have two different defendants in the same case.

1 They are in two completely opposite ends of the indictment,  
2 with no overlap. I believe Mr. O'Donnell has agreed to have me  
3 represent him, and does this voluntary, subject to Your Honor's  
4 questioning.

5 THE COURT: Do you understand the problem? We have  
6 discussed it with the other attorneys and the other defendants.  
7 If he is representing somebody else, he may not be able to do  
8 as well for you. You understand?

9 DEFENDANT O'DONNELL: Yes, I understand.

10 THE COURT: And you're willing to waive that?

11 DEFENDANT O'DONNELL: Yes.

12 THE COURT: Do you want to talk to another attorney  
13 before you make a final decision?

14 DEFENDANT O'DONNELL: No.

15 THE COURT: You have discussed it thoroughly?

16 DEFENDANT O'DONNELL: Yes.

17 THE COURT: And you want this attorney to represent  
18 you?

19 DEFENDANT O'DONNELL: Yes.

20 THE COURT: All right. Give me a written waiver,  
21 please, at your leisure.

22 MR. MARTINELLI: Yes, sir.

23 Your Honor, on the readiness issue --

24 THE COURT: Let me finish this, please.

25 Would you arrange, so we get a waiver from Sabella, as

1 well?

2 MR. MARTINELLI: He's going to be here at 1:15.

3 THE COURT: And you're going to be here, too?

4 MR. MARTINELLI: Yes.

5 THE COURT: Take it up with him, so he understands the  
6 problem, will you?

7 MR. MARTINELLI: I will. I have already, Your Honor.

8 THE COURT: Okay.

9 MR. MARTINELLI: I've done it multiple times, very  
10 early.

11 THE COURT: Good.

12 MR. MARTINELLI: As the to readiness issue, I suspect,  
13 at least based on the 15 people here -- and I know some defense  
14 attorneys are here for the future appearances -- you're going  
15 to have redundant argument on this, but I don't know how I  
16 could even possibly be ready, assuming four weeks after  
17 June 9th or the week break. Mr. O'Donnell is on, at present,  
18 33 tapes, 32 tapes. I think it's over 28 hours of conversation  
19 with him alone. I can hire a team of lawyers and not be ready.

20 Having that been said, considering Mr. Franz's  
21 argument and latching onto that as well, if Mr. Franz's trial  
22 starts in September, and I'm to go four to five to six weeks  
23 after that, I would have no argument in not being ready. I  
24 don't see how I could not be ready.

25 It's a critical difference, all the time period that



1 we're going to spend on the case and reviewing the evidence  
2 would happen in this critical time period, and I think it would  
3 give me sufficient time. That's my application.

4 THE COURT: You're denied. The reasons I have said in  
5 connection with these other letters. We'll try to do  
6 everything we can to help counsel.

7 Zagari?

8 MR. RUBINSTEIN: Yes, Your Honor. Ron Rubinstein for  
9 the defendant, Zagari.

10 Subject to something unforeseen, I have no problem  
11 with the grouping, to be included in the Group B. Mr. Zagari  
12 has no problem with that.

13 The only other issue relates to the conflict issue,  
14 Your Honor. The government has in its letter indicated to the  
15 Court that I represented previously Anthony Ruggiano, who is a  
16 government witness, apparently on the RICO end of the case.  
17 We're non-RICO defendants here. He apparently is not going to  
18 be a witness in the trial of Group B. I've discussed that with  
19 Mr. Zagari. He's prepared to waive.

20 I also would like to advise the Court and the  
21 government that I had previously represented Joseph Corazzo,  
22 Senior in both the state case and in the federal case, and that  
23 I've discussed prior representation with Mr. Zagari, and he is  
24 prepared to waive any potential conflict, Your Honor.

25 THE COURT: Where's Mr. Zagari? Would you mind coming

1 up, sir, please? Have you discussed this with your attorney?

2 DEFENDANT ZAGARI: Yes, I have.

3 THE COURT: And you understand that he may be  
4 inhibited in some way because he has representing you, and he's  
5 represented others?

6 DEFENDANT ZAGARI: Yes.

7 THE COURT: They have to be considered as possible  
8 witnesses.

9 DEFENDANT ZAGARI: Yes.

10 THE COURT: And you want to go forward with him?

11 DEFENDANT ZAGARI: Yes, I do.

12 THE COURT: Do you want time to take it up with  
13 another lawyer and get some independent advice?

14 DEFENDANT ZAGARI: No, sir.

15 THE COURT: All right. Give me a written waiver now,  
16 from this defendant.

17 MR. RUBINSTEIN: Yes, Your Honor.

18 THE COURT: Now, we also have the Charles Carniglia  
19 problem.

20 MR. RUBINSTEIN: Yes. Actually, I represented him for  
21 a very short time. My partner, Joseph Corazzo, Jr. actually  
22 tried the case of Charles Carniglia.

23 THE COURT: Well, where is Carniglia now?

24 MR. RUBINSTEIN: Carniglia is a defendant in another  
25 group.

1 THE COURT: Can you get a waiver from him?

2 MR. RUBINSTEIN: Yes, Your Honor.

3 THE COURT: All right. Well, let's get the waiver  
4 from him, as well.

5 MR. RUBINSTEIN: I'll remain here until his conference  
6 is had.

7 THE COURT: Now, you represented Ruggiano?

8 MR. RUBINSTEIN: Yes. That's what I said, Judge.

9 THE COURT: Who is going to cross-examine Ruggiano?

10 MR. RUBINSTEIN: I understand from the government's  
11 submission, he is not going to be a witness at the group B  
12 trial.

13 THE COURT: Is that true?

14 MR. LIPTON: Yes, Judge. It was our intention in  
15 writing the letter to try to limit the conflicts. So that if  
16 Group B remains the same, we do not believe that Mr. Ruggiano  
17 will be testifying against Mr. Zagari in that group. Of  
18 course, if the groups were to change, and that he were to  
19 testify in a group, even if it's not directly with regard to  
20 Mr. Zagari, then we would ask to have that same safeguard put  
21 into place, where Mr. Rubinstein would not be cross-examining  
22 Mr. Ruggiano.

23 THE COURT: It's unlikely that will happen, but will  
24 you agree to that?

25 MR. RUBINSTEIN: Absolutely, Your Honor.

1 THE COURT: And your client, will he agree to that?

2 DEFENDANT ZAGARI: Yes, I will.

3 THE COURT: All right. Put it in the letter, would  
4 you? Nothing else.

5 And Corazzo, Sr. is also in the picture, isn't he?

6 MR. RUBINSTEIN: That's what I said. He's going to be  
7 in the group that is your next group.

8 THE COURT: Well, are you going to get a waiver from  
9 him, too?

10 MR. RUBINSTEIN: Yes, Your Honor.

11 THE COURT: Okay. You're going to get the necessary  
12 waivers, right?

13 MR. RUBINSTEIN: Correct, Your Honor.

14 THE COURT: Try to get them in writing, so can close  
15 all of this out.

16 That covers Group B, correct?

17 MR. LIPTON: Yes, Judge.

18 THE COURT: Now, Group C is Cacciopoli, Cracolici,  
19 Epifania, Licata, Scopo and Scotto, correct? Six? Is that  
20 correct?

21 MR. LIPTON: Yes, Judge.

22 THE COURT: So this will be on the trailing calendar  
23 after Group B -- again, unless we can try a number of them  
24 together.

25 MR. DIBENEDETTO: Judge, Joseph DiBenedetto for

1 Mr. Scopo. Would the government state for the record  
2 approximately how long the trial would last for Group B?

3 MR. LIPTON: Judge, we would anticipate also four to  
4 six weeks for Group B.

5 THE COURT: Four weeks.

6 MR. DIBENEDETTO: Thank you.

7 THE COURT: Cacciopoli?

8 MR. TANON: Daniel Tanon for Tommy Cacciopoli.

9 At this time, we have no objection to Group C.

10 THE COURT: Okay. And you have no conflict problem,  
11 correct?

12 MR. TANON: I have no problem whatsoever, Your Honor.

13 THE COURT: Thank you.

14 Cracolici?

15 MR. AMOROSA: Dominic Amorosa for Mr. Cracolici,  
16 Judge.

17 THE COURT: Yes?

18 MR. AMOROSA: Judge, assuming that these other trials  
19 go first, I don't have a problem with respect to the scheduling  
20 of our case third. However, if they plead out, I do want to  
21 note that I certainly can't be ready in June. I have the same  
22 problems that a lot of these other lawyers have voiced, and we  
23 would voice it again.

24 THE COURT: I don't think you have a serious worry  
25 there. They're not all pleading out.

1 MR. AMOROSA: Who knows?

2 THE COURT: Well, if it happens, we'll all take a  
3 vacation in June.

4 MR. AMOROSA: Other than that, we're ready to go after  
5 these other cases.

6 THE COURT: Good.

7 Now, you have a conflict in the case? According to my  
8 notes at the outset, Joseph DiBenedetto, who currently  
9 represents Scotto --

10 MR. DIBENEDETTO: Yes, Judge?

11 THE COURT: -- was associated with Mr. Benfante in the  
12 law offices of Benfante and DiBenedetto, when it appears that  
13 Mr. DiBenedetto is no longer associated with Mr. Benfante.

14 So is there a conflict at the moment?

15 MR. DIBENEDETTO: No, Judge. The issue was previously  
16 addressed, and my client gave a waiver on the record.

17 THE COURT: Should we get a waiver from Cracolici?

18 MR. AMOROSA: No, Judge. I think there is some  
19 confusion. I have no conflict, nor does Cracolici. I think  
20 you're talking to counsel for another defendant. Judge, I  
21 believe it's Mr. Chirico.

22 MR. LIPTON: Judge, that was Mr. Chirico. The  
23 conflict didn't involve Mr. DiBenedetto.

24 THE COURT: There is no conflict with Cracolici?

25 MR. AMOROSA: No, sir.

1 THE COURT: All right. Then my notes are wrong,  
2 representing Cracolici.

3 Epifania?

4 MR. FROCCARO: Judge, James Froccaro for Mr. Epifania.

5 Judge, I have no problem with the proposed trial.

6 Judge, I do have a conflict issue. I represent  
7 another defendant in the case, Angelo Ruggiero, who was placed  
8 in Group H by the government. I have discussed the conflict  
9 issue with Mr. Epifania. He's willing to waive. He's here in  
10 court.

11 THE COURT: Would you come forward, please,  
12 Mr. Epifania?

13 MR. FROCCARO: Judge, I also have another minor  
14 conflict issue.

15 THE COURT: Let's take this up first, if you don't  
16 mind.

17 Do you understand? You have heard what's going on?

18 DEFENDANT EPIFANIA: Yes, Your Honor.

19 THE COURT: You understand your attorney represents  
20 somebody else, and that may interfere with his full  
21 representation of you?

22 DEFENDANT EPIFANIA: Yes.

23 THE COURT: And have you discussed it with him?

24 DEFENDANT EPIFANIA: Yes, I did.

25 THE COURT: And do you want time to discuss it with

1 another lawyer?

2 DEFENDANT EPIFANIA: No.

3 THE COURT: And are you willing to waive in order to  
4 get this attorney?

5 DEFENDANT EPIFANIA: Yes, Your Honor.

6 THE COURT: And this is the one you wanted --

7 DEFENDANT EPIFANIA: Yes.

8 THE COURT: -- under the Constitution?

9 All right. Get me a written waiver. I see no  
10 problem. And we're getting a written waiver from the --

11 MR. FROCCARO: I will from Mr. Ruggiero. I will be  
12 here this afternoon, Judge.

13 Judge, there's one other small minor conflict. I  
14 represented a fellow by the name of John Regis, who is one of  
15 gambling defendants in the case. I just represented him --

16 THE COURT: Give me the spelling for the reporter.

17 MR. FROCCARO: R-E-G-I-S, Your Honor.

18 He's a gambling defendant. I represented him at his  
19 arraignment. We had no confidential communications whatsoever.  
20 That was my the extent of my representation.

21 THE COURT: Can you get a waiver from him?

22 MR. FROCCARO: Sure.

23 THE COURT: Put it in writing.

24 Any problem?

25 MR. LIPTON: No. We don't see any problem with that,



1 Judge.

2 I just want to remind defense counsel, I believe some  
3 of the defense counsel -- maybe not the ones that have spoken  
4 already -- have represented other members that have been  
5 alleged to be either members or associates of the Gambino  
6 family. I just don't know all the different instances, so I  
7 just want to make sure that those representation issues are  
8 aired out, so we don't have any --

9 THE COURT: I have instructed counsel. They're all  
10 ethical, eminent members of the Bar, and I assume they'll take  
11 it up with me if --

12 MR. RUBINSTEIN: Your Honor, if the government will  
13 provide me with a list of all the people they claim are  
14 members, then I will be in a position to tell them that whether  
15 I represented this person or that person.

16 THE COURT: Well --

17 MR. RUBINSTEIN: It's not a question I have ever asked  
18 anybody.

19 THE COURT: Well, up to this point, you have dealt  
20 with the problem to my satisfaction. If something else comes  
21 up, we'll deal with it. I don't want to deal with  
22 hypotheticals. I've got enough actual problems.

23 So that covers Epifania. He is okay.

24 Licata?

25 MR. CARNESI: Yes, Your Honor. Charles Carnesi for

1 Anthony Licata.

2 Judge, we have no problem with the scheduling of the  
3 trial; however, consistent with the letter that was submitted  
4 yesterday by my co-counsel, Mr. Ginsberg, our request was that  
5 we would go as originally scheduled by the government in a  
6 group of three, Mr. Licata, Mr. Scotto and Mr. Cracolici.

7 THE COURT: Well, I can't accommodate you. I'm sorry.

8 MR. CARNESI: (Nods head affirmatively.)

9 THE COURT: There's no other problem there.

10 MR. CARNESI: No, Judge.

11 THE COURT: Can the government accommodate him?

12 MR. LIPTON: Judge, that would be a three-person --

13 THE COURT: Yes or no?

14 MR. LIPTON: No, Judge.

15 THE COURT: Thank you.

16 Mr. Scopo?

17 MR. DIBENEDETTO: Yes, Judge. Joseph DiBenedetto. We  
18 have no objection to our inclusion in Group C.

19 THE COURT: Your client is not here?

20 MR. DIBENEDETTO: He is, Judge.

21 THE COURT: Where is he?

22 MR. DIBENEDETTO: He is in the second row.

23 THE COURT: Yes. Okay. And we're going to get a  
24 letter from -- there is no other problem, is there?

25 MR. DIBENEDETTO: No, Judge.

1 THE COURT: So you're satisfied with the present  
2 allocation?

3 MR. DIBENEDETTO: I am, Judge.

4 THE COURT: Okay. I think that deals with all of  
5 those in A, B and C that I scheduled for 11:30.

6 Scotto, we have dealt with Scotto, haven't we --  
7 Scopo. I'm sorry, Scotto. I beg your pardon.

8 MR. GINSBERG: Good afternoon, Your Honor. Seth  
9 Ginsberg.

10 Apart from the objections raised in the letter that I  
11 submitted regarding our request that we be tried as a group of  
12 three, Mr. Licata, Mr. Scotto and Mr. Cracolici, I have nothing  
13 additional to add, other than to note that while the government  
14 now says it cannot accommodate that request, it was their  
15 original proposal that these three be tried as a different  
16 group.

17 THE COURT: I understand. But when you shuffle the  
18 cards, some cards that are on top come out at the bottom.

19 MR. TANON: That case will try -- this case with the  
20 three of us will be tried in a week.

21 THE COURT: I understand. I understand.

22 MR. TANON: The government proposed it initially. We  
23 didn't propose it. We accepted it.

24 Then we come before Your Honor yesterday to submit  
25 another letter, and they said, we're going to take another

1 three defendants and throw them in, even though they have  
2 nothing at all to do with our charges, except through the RICO  
3 charge.

4 THE COURT: I understand.

5 MR. TANON: It really is unfair, but I understand your  
6 problem, as well.

7 THE COURT: Well, life is unfair. I'll try to make it  
8 as unfair as possible.

9 MR. TANON: Thank you.

10 THE COURT: Anything further this morning?

11 MR. FRANZ: Your Honor, if I may, Eric Franz on behalf  
12 of Mr. Sclafani.

13 I seized upon Your Honor's comment earlier. I hope  
14 that we can revisit the trial date issue, if not today, a  
15 subsequent status conference next week.

16 THE COURT: We'll have to have another status  
17 conference, particularly with respect to A, or in order to go  
18 over all the in limine issues.

19 MR. FRANZ: Absolutely.

20 THE COURT: And if you can get together -- we don't  
21 want to schedule it too early, because you won't know enough  
22 about the problems if we schedule it too early, and we don't  
23 want to schedule it too late, because then I won't be able to  
24 solve them. So I would supposed mid-May would be a good time  
25 for Group A.

1 MR. FRANZ: As I indicated, I'll be on trial then. My  
2 immediate request is as follows: In an effort to get ready for  
3 trial as soon as possible, if the Court grants more time, that  
4 would be appreciated because my position remains the same. I  
5 won't be ready for June 9th, but I'd ask that the government  
6 provide us immediately with premarked exhibits, with a list of  
7 all of the tapes that they intend to introduce at the trial,  
8 with draft transcripts. I have already executed a draft  
9 transcript stipulation to them several weeks ago. I haven't  
10 received a shred of a transcript.

11 I would like all the 3500 material in the advance e so  
12 company object adequately prepared for trial and 404(b)  
13 evidence I would like to get that in due Hayes if we're going  
14 to be forced to go to trial within twos month months from today  
15 I would ask that the government be ordered to give us all of  
16 these materials with no exceptions within the next we two weeks  
17 in addition, I will speak with June about making request to the  
18 court for ti assignment of additional counsel to assist to  
19 review the discovery and review the tapes I'll find out what  
20 documentation the Court would need.

21 THE COURT: Well, you'll have to meet requirements  
22 under CJA with respect to ability to pay, I suppose.

23 MR. FRANZ: I will obviously address that.

24 THE COURT: Look into it, and if you find a  
25 resolution, I'll be happy to help you.

1 MR. FRANZ: Great. I'll point out that already under  
2 the circumstances, Mr. Sciafani has to hire another lawyer for  
3 the purpose of cross-examining Mr. DiLeonardo. He's of modest  
4 means. We'll fill out the financial forms, and we'll address  
5 the Court.

6 The point is, if we're going to go to trial, if  
7 whether it be June, July or August, the sooner the government  
8 provides us with the material, the sooner I can attempt to  
9 provide effective assistance to my client.

10 THE COURT: Well, maybe we ought to meet the end of  
11 the first week in May, and the government will give you the  
12 materials on a rolling basis, as it's available.

13 Try to get it to them as soon as possible.

14 MR. LIPTON: Judge, we're working under the same  
15 practical realities. Not only are we going to be preparing for  
16 trial, but we have other people that are coming thereafter. So  
17 we're trying to get everything together.

18 There's documents that we still are copying, getting  
19 out. We have gotten most of the tapes out, but we will do as  
20 best we can. We have those same issues.

21 THE COURT: May 8th, 10 a. m. for a pretrial hearing  
22 on Group A. And if you have any motions, you can make  
23 returnable then, that would be helpful.

24 MR. FRANZ: Your Honor, just to seize upon the last  
25 comment -- since the Court is suggesting the government provide

1 materials on a rolling basis as they're available, the  
2 principal witness against my client would be this individual  
3 named Gallardo. I presume they have the 3500 material. That  
4 should be in their possession at this point in time. If they  
5 have it in their possession, could we ask that they provide it  
6 to us within the next week, so we could start reviewing it?

7 THE COURT: The government knows my view. They should  
8 give it to you as soon as they can.

9 Is there anything further this morning?

10 MR. FUTERFAS: Your Honor, what time is that on the  
11 8th?

12 THE COURT: Ten o'clock.

13 MS. MACEDONIO: Your Honor, I'm in the unique  
14 position, having just filed a notice of appearance in this case  
15 of not even really understanding the depth of discovery --

16 THE COURT: I can't hear you. I'm sorry.

17 MS. MACEDONIO: I'm sorry. I'm in the unique position  
18 of having --

19 THE COURT: Don't you have a microphone there?

20 MS. MACEDONIO: No, Judge. Yes. Now, I do. Can you  
21 hear me now, Your Honor?

22 THE COURT: Now I hear you better.

23 MS. MACEDONIO: Okay. Thanks.

24 Having just filed a notice of appearance in the case,  
25 I'm in the unique position of not even fully understanding the

1 depth of the discovery against my client but I do know that as  
2 late as Monday, the government filed three additional discovery  
3 letters in this case.

4 Since we are under a tight schedule, I would request  
5 that the Court at some date in the very near future conclude  
6 that discovery is complete, and if the government can't provide  
7 it, then they can't use it, Judge. Because we're now really in  
8 a game of catch up, and we can't be getting discovery on June  
9 first for a trial that is starting on June ninth.

10 THE COURT: I understand your position. You'll have  
11 to make that motion before me and I'll consider it, yes.

12 MS. MACEDONIO: Thank you, Judge.

13 THE COURT: I don't find at this moment an amenable  
14 motion.

15 MR. FUTERFAS: Your Honor, speaking for Group A or at  
16 least with respect to the Group A defendants, when one attorney  
17 speaks, can we assume, Your Honor, that the remaining counsel  
18 join in those statements and applications?

19 THE COURT: That will be the assumption of the Court,  
20 unless you want to disassociate yourself. It will be a motion  
21 on behalf of everyone.

22 MR. FUTERFAS: Very well. And Your Honor, I note in  
23 the letter I filed last night, we made the request as well in  
24 writing for the government to identify the tapes they will play  
25 at trial, its witnesses, promptly disclose all 3500 material,



1 so the government now has in both writing and orally, our need  
2 for those materials.

3 MS. MACEDONIO: Your Honor, I have one further  
4 application that deals specifically with separation orders.

5 My client is being detained at the Queens facility,  
6 along with five other individuals. Because the institution  
7 itself is so small, there is a genuine problem with these  
8 incarcerated defendants being able to have access to the  
9 discovery material that's been provided there. I think that  
10 could be cured if the separation orders were lifted. I don't  
11 know.

12 THE COURT: I'm not going to interfere with the  
13 separation orders.

14 MS. MACEDONIO: Your Honor, I think that part of this  
15 matter or at least --

16 THE COURT: I'm not -- excuse me. I'm not going to  
17 interfere with the separation orders, based on the information  
18 before me. If you want to make a formal motion, I'll hear it.  
19 I'm not doing it on this oral motion.

20 MS. MACEDONIO: I will do so, Your Honor.

21 I believe that issues regarding the defendants' access  
22 to audio and videotapes is being heard with regard to the MDC  
23 at 3:30, and we'll come back to further address it then.

24 THE COURT: Thank you very much.

25 Anything further? All right. Thank you very much,

1 and we'll have the next grouping at 1:15. Enjoy your lunch.

2 (11:30 conference concluded.)

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